

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re Medtronic, Inc. Sprint Fidelis
Leads Products Liability Litigation

This document relates to:
ALL CASES

Multidistrict Litigation
No. 08-1905 (RHK/JSM)
ORDER

This matter is before the Court *sua sponte*.

By Order dated January 5, 2009, the Court dismissed with prejudice the Master Consolidated Complaint for Individuals in this multidistrict litigation. None of the individual cases comprising this action have yet been dismissed, however. The Court's dismissal Order was predicated on preemption under 21 U.S.C. § 360k(a); it appears to be one of the first interpretations of the Supreme Court's decision in Riegel v. Medtronic, Inc., ___ U.S. ___, 128 S. Ct. 999, 1003 (2008), in a case involving hundreds (if not thousands) of plaintiffs.

A status conference is currently scheduled for January 28, 2009, at which the impact of the Court's dismissal Order will be discussed. Given the obvious importance of the issue to Plaintiffs, as well as the unsettled nature of preemption law and the reach of Riegel, the Court is currently considering whether to certify its dismissal Order to the United States Court of Appeals for the Eighth Circuit for review. See 28 U.S.C. § 1292(b). Doing so may streamline the appeal process and lead to the most expeditious and cost-effective review of the Court's preemption ruling.

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED** that, on or before January 27, 2009, Plaintiffs and Medtronic shall each submit a letter brief, not to exceed two pages, addressing whether, in their view, certification under Section 1292 would be appropriate in this case.¹ The parties should be prepared to discuss the certification issue at the January 28 status conference.

Dated: January 23, 2009

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge

¹ The letter briefs should be submitted by the parties' respective lead counsel.